

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM ALVIE MARLOW,

Petitioner,

v.

SCOTT FRAKES,

Respondent.

No. C09-5455 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
CASE WITH PREJUDICE, AND
DENYING MOTION FOR A
CERTIFICATE OF APPEALABILITY

The Court, having reviewed the petition for writ of habeas corpus, the response, the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 39), objections to the Report and Recommendation (Dkt. 44, 45, and 46), petitioner's motion for a Certificate of Appealability (Dkt. 44), and the remaining record, does hereby find and **ORDER:**

- (1) In his objections, petitioner contends that the magistrate judge erred by referring to petitioner's conviction as being in Pierce County, when he was actually convicted in Lewis County. Dkt. 44, at 2. Petitioner is correct: he was convicted in Lewis County Superior Court. *See* Dkt. 25, Exh. 1. Petitioner also contends that he exhausted his Sixth Amendment right to effective assistance of counsel claim. Dkt. 44, at 2. On September 23, 2010, the court rejected this contention and dismissed the Sixth Amendment claim with prejudice. Dkt. 29. Petitioner also contends that the magistrate judge's order denying his motion for appointment of counsel (apparently Dkt. 33) was error. Petitioner has not shown exceptional circumstances warranting appointment of counsel. The court concurs with the analysis and recommendation of the magistrate judge, with the correction that petitioner was convicted in Lewis County Superior Court, not Pierce County Superior Court. The Court **ADOPTS** the Report and Recommendation (Dkt. 39), with that correction.
- (2) Petitioner's first claim for federal habeas relief based on the Fifth and Fourteenth Amendments' due process clauses and the First Amendment's access to courts claim is **DENIED**. Petitioner's remaining claims were dismissed with prejudice by the court on September 23, 2010, as unexhausted and procedurally barred (Dkt. 29).

- 1 (3) In his objections, petitioner requested that the court grant a Certificate of
2 Appealability. Dkt. 44. In the event that petitioner files an appeal with the Ninth
3 Circuit U.S. Court of Appeals, the motion for a Certificate of Appealability (Dkt.
4 44) is **DENIED**, in accord with the recommendation of the magistrate judge.
- 5 (4) This case is **DISMISSED WITH PREJUDICE**.
- 6 (5) The Clerk is directed to send copies of this Order to Petitioner, counsel for
7 Respondent and to the Hon. Karen L. Strombom.

8 DATED this 17th day of May, 2011.

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10 ROBERT J. BRYAN
11 United States District Judge
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